

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

6 JEFFREY MERRITT WILSON,

Case No. 3:25-cv-00028-MMD-CLB

7 v.

Petitioner,

ORDER

9 FRANCISCO V. AGUILAR, *et al.*,

10 Respondents.

12 Petitioner Jeffery M. Wilson has filed a petition for writ of habeas corpus. (ECF No.

13 1.) The Court has reviewed the habeas petition under Rule 4 of the Rules Governing
14 Section 2254 Cases and concludes that it will dismiss the petition without leave to
15 amend.¹

16 Rule 4 provides in pertinent part:

17 If it plainly appears from the petition and any attached exhibits that the
18 petitioner is not entitled to relief in the district court, the judge must dismiss
the petition and direct the clerk to notify the petitioner.19 The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition
20 for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the
21 respondent's motion to dismiss, or after an answer to the petition has been filed. See
22 *Herbst v. Cook*, 260 F.3d 1039 (9th Cir. 2001). Allegations in a petition that are vague,
23 conclusory, or palpably incredible are subject to summary dismissal. See *Hendricks v.*
24 *Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990). A petition for habeas corpus should not be

25 1While it is not clear that Petitioner brings his petition under Section 2254, the Court
26 nonetheless applies the Rule 4 framework. See 28 U.S.C. foll. § 2254, Rule 1(b) ("The
27 district court may apply any or all of these rules to a habeas corpus petition not covered
by Rule 1(a).").

1 dismissed without leave to amend unless it appears that no tenable claim for relief can
2 be pleaded were such leave granted. See *Jarvis v. Nelson*, 440 F.2d 13, 14 (9th Cir.
3 1971).

4 Wilson's petition, which names Nevada's Secretary of State, Francisco V. Aguilar
5 as the Respondent, is an assemblage of unintelligible and extraneous verbiage that is,
6 for all practical purposes, incomprehensible. There is nothing resembling "particularized
7 facts which entitle [petitioner] to habeas corpus relief" – i.e., "facts ... consist[ing] of
8 sufficient detail to enable the court to determine, from the face of the petition alone,
9 whether the petition merits further habeas corpus review. See *Adams v. Armontrout*, 897
10 F.2d 332, 334 (8th Cir. 1990) (emphasis added).

11 Moreover, a federal court's subject matter jurisdiction in a habeas corpus case
12 depends upon petitioner's status as a person "*in custody* in violation of the Constitution
13 or laws or treaties of the United States." *Maleng v. Cook*, 490 U.S. 488, 490 (1989)
14 (quoting 28 U.S.C. § 2241(c)(3) (emphasis added by *Maleng* court). The "*in custody*"
15 requirement is determined by examining whether the petitioner was in physical custody
16 or under some other significant form of restraint at the time the petition was filed in federal
17 court. *Id.* at 491-493. There is nothing in Wilson's pleading to suggest that he is currently
18 subject to a significant form of restraint. Indeed, the Court is unable to envision how
19 Nevada's Secretary of State could be subjecting Wilson to the type of restraint necessary
20 to establish habeas jurisdiction.

21 Because the foregoing defects cannot be cured by amendment, the Court
22 concludes that it would be futile to grant Wilson leave to amend his petition. Accordingly,
23 the Court will dismiss his petition.

24 It is therefore ordered that the petition for writ of habeas corpus (ECF No. 1) is
25 dismissed without leave to amend.

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1 The Clerk of Court is directed to enter judgment accordingly and close this case.
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3 DATED THIS 14th Day of January 2025.



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5 MIRANDA M. DU
6 UNITED STATES DISTRICT JUDGE
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